

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 520 of 1989 TO 574 of 1989

with

FIRST APPEAL No 638 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

PATEL MAGANLA SHIVRAM

Versus

SPL LAND ACQUISITION OFFICER

Appearance:

1. First Appeal No. 520 to 574 of 1989
MR.BS PATEL for Petitioner
Mr.P.G.Desai,GP in FA 520 to 547 of 89 for Respdt.
No. 1
Mr.S.S.Patel,AGP in FA 548 to 574 & 638 of 89.
2. First AppealNo 638 of 1989
MR.BS PATEL for Petitioner
GOVERNMENT PLEADER for Respondent No. 1

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 03/11/1999

ORAL JUDGEMENT

1. The appellants- claimants in all these appeals have challenged the common judgment and order dated 22.7.1988 passed by the learned Extra Assistant Judge, Mehsana, holding that the appellants- claimants are entitled to Rs. 6/- per sq.mt. being the market value of the lands of village Kansa, Taluka Visnagar, under acquisition. The lands of the claimants were acquired for common purpose of Dharoi Canal Project for which notification under section 4 of the Lands Acquisition Act (hereinafter referred to as 'the Act') was published on 4.6.1981. On 15.2.1983, section 6 notification was issued and thereafter notices under section 9 were published and the persons whose lands were to be acquired were given an opportunity to submit their claims. The Deputy Collector and Special Land Acquisition Officer, Visnagar, after following the required procedure, fixed the market price of the lands in question at Rs. 3/- per sq.mt. Since the appellants were not satisfied by the compensation awarded for their lands, they moved the Special Land Acquisition Officer under section 18 of the Act to refer the matter to the District Court, Mehsana and accordingly 56 land reference cases being LAR Nos. 298 to 363 were made. The claimants raised identical contentions that the compensation awarded is not adequate and they are entitled to get at least Rs. 100/- per sq.mt. instead of Rs. 3/-per sq.mt. fixed by the Land Acquisition Officer. It is also their case that the lands under acquisition were virtually agricultural lands and they used to take two to three crops in a year. The other lands situated near the lands in question have been converted into NA and these lands are developed in all respects, like educational institutions, business houses etc. According to the claimants, in the village Kansa, there is a bus station and it is almost a part and parcel of Visnagar town which is the Headquarter of Visnagar taluka. He has also submitted that the actual possession of the lands was handed over prior to the date of notification under section 4 i.e. 4.6.1981 and, therefore, they claimed the market value at the rate of Rs. 100/- per sq.mt. In all the cases, written objections were filed refuting the claim of the claimants, and supporting the common award passed by the Special Land Acquisition Officer.

2. The claimants in the instant case have produced the sale deeds Ex. 132, 133, 134 and 135 with respect to the lands of village Kansa. However, it appears that the learned judge has not considered the sale deeds Ex. 132

to 134 on the ground that they are not proved. As far as the sale deed Ex. 135 is concerned, it is dated 16.8.1982 after about one year from 4.6.1981 when the notification under section 4 was issued with respect to the lands under acquisition. Reading Ex. 135, it is clear that the lands of survey no. 457 admeasuring 511.20 sq.mt. which were N.A. lands were sold at the rate of Rs. 55/- per sq.mt. The learned judge has rejected the claim of the claimants of even Rs. 55/- on the ground that the sale deed Ex. 135 will not assist the claimants as the lands under the said sale deed were N.A. lands and secondly the lands of Ex. 135 are not situated in the nearby area of the lands under acquisition. The learned judge even after holding this, felt that the price fixed at Rs.3/- per sq.mt. for the lands acquired by the Special Land Acquisition Officer is very low price and, therefore, he held that the claimants are entitled to get something more by way of compensation and he, therefore, awarded additional amount of Rs. 3/- per sq.mt.

3. After having gone through the reasonings of the learned judge, it is difficult to understand as to on what basis the learned judge has enhanced the amount of compensation from Rs. 3/- per sq.mt. to Rs. 6/- per sq.mt. Equally, it is difficult to understand as to why he has not taken into consideration the principle laid down by various rulings while determining the amount of compensation.

4. Mr.B.S.Patel, learned advocate appearing for the appellants submitted that the sale deed Ex. 135 dated 16.8.1982 with respect to the sale of N.A. lands of village Kansa whereby the lands were sold at the rate of Rs. 55/- per sq.mt. can be relied upon for assessing the market price of the lands under acquisition. Mr. Patel fairly conceded that permissible deduction can be made considering the large area of lands, N.A. lands and the distance of the lands under sale deed Ex. 135. In support of his submission, he has relied upon the decisions of this Court as well as the apex court. Mr.S.S.Patel, learned AGP on the other hand, while supporting the judgment of the trial court, submitted that no case is made out for any additional amount of compensation. With a view to find out the distance between the survey no. 457 of Ex. 135 and the lands under acquisition, namely survey no. 50 to 200 and survey nos. 1700 to 1850, I have tried to see the location of the lands under acquisition in the map produced on the record of the case. However, the map on the record does not show the survey nos. of the lands

under acquisition. In view of this, it appears that the learned trial judge observed that the lands under acquisition are at a far away distance from the survey no. 457 under sale deed Ex. 135 and, therefore, he was of the view that Ex. 135 is not a comparable sale deed. With the consent of the learned advocates appearing for the parties, I had asked the learned AGP to produce the map showing the lands under acquisition and the lands bearing survey no. 457 with a view to ascertain the distance between the lands. Today, the learned AGP has produced a detailed map prepared by the Deputy Executive Engineer, Sabarmati Canal Project Sub Division, Visnagar. Having perused the same and having taken into consideration the scale of distance stated in the map, it appears that the lands under acquisition are not at a far away distance. Of course, there is a distance in between the lands, but in any case, they are the part and parcel of village Kansa. In any case, merely because the lands under acquisition are at some distance from the lands survey no. 457, that fact by itself is not a ground to ignore the sale deed Ex. 135. In my opinion, the sale deed Ex. 135 is required to be taken as a base for determining the market value of the lands under acquisition. In any case, the survey no. 457 of Ex. 135 is having a larger area of 511.20 sq.mt. than the lands in question. The Division Bench of this Court in the case of Bai Mani Vs. State, 25(2) GLR 1229 has ruled that having regard to the vicinity to the developing industrial town, the demand for large plots of land in the locality and a wide frontage, it would be just and fair to deduct about 33% from the net price and that will be the fair market value of the lands under acquisition. In view of the fact that the lands of sale deed Ex. 135 were sold at the rate of Rs. 55/- per sq.mt., being the larger area, deducting Rs. 18/- at the rate of 33%, the price of the lands under acquisition would come to Rs. 37/- per sq.mt. Since the lands under Ex. 135 were N.A. lands, as per the decision of the apex court, a further deduction is also required to be made from the lands under acquisition which are undeveloped lands having future potential. The Supreme Court, in the case of Hasan Ali Valimahmad Vs. State of Maharashtra, AIR 1998 SC 700, made a deduction at the rate of 50% towards the development charges. In the case before the Supreme Court, the acquired lands being undeveloped lands having future potential located only at a short distance from the city. The Supreme Court made a deduction for development charges while determining its market value and accordingly the deduction was made at the rate of 50% towards the development charges. Applying the ratio laid down in the said judgment in the present case, further

50% of the amount is required to be deducted for arriving at the market value of the lands under acquisition and, therefore, deducting Rs. 18.50 per sq.mt. from Rs. 37/per sq.mt., it would come to Rs. 18.50 per sq.mt. Even further deducting Re.1.00 towards the distance of the acquired lands from survey no. 457 of Ex. 135, I am of the opinion that Rs. 17.50 per sq.mt. will be the appropriate price for the lands in question. In this view of the matter, the learned trial judge was not right in awarding only Rs. 6/- per sq.mt. for the lands in question.

5. In the result, all the appeals are partly allowed. The appellants- claimants will be entitled to receive an additional amount of Rs. 11.50 per sq.mt. [Rs. 17.50 being the market value per sq.mt. of the lands in question (-) Rs. 6/- per sq.mt. fixed by the trial court] from the date of possession of the lands in question with interest at the rate of 9% p.a. for the first year from the date of taking possession and thereafter for rest of the period till realisation, at the rate of 15% p.a. The rest of the directions given by the learned trial judge shall remain as they are. The respondents are directed to deposit the amount of compensation as per this judgment and order in the trial court within eight weeks from today. On depositing the said amount, the trial court is directed to disburse the said amount to the concerned claimants after proper verification within two weeks thereafter.

All these appeals are partly allowed with costs.

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